

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the matter of)

Amendment of 47 C.F.R. § 1.1200 et seq.)
Concerning Ex Parte Presentations in)
Commission Proceedings)

GC Docket No. 95-21

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**COMMENTS OF
SBC COMMUNICATIONS INC.**

Southwestern Bell Corporation, dba SBC Communications Inc. ("SBC"), submits these Comments in response to the Commission's Notice of Proposed Rulemaking released on February 7, 1995. In that Notice, the Commission requested comment on several proposals intended to simplify and clarify its rules with respect to ex parte communications. SBC generally supports the goals of the Commission in this proceeding. These Comments set forth SBC's response to certain of the specific amendments proposed by the Commission.

- I. SBC supports the Commission's proposal to treat as restricted proceedings only those required to be restricted by the APA and those specified as restricted by the Commission on a case-by-case basis.**

The Commission proposes to treat as restricted proceedings only those required to be restricted by the Administrative Procedures Act ("APA") and those specified as restricted by the Commission on a case-by-case basis. SBC supports the Commission's approach of following the APA in defining the situations in which ex parte presentations are totally prohibited; those

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situations not covered by the APA would be appropriately handled with a permit-but-disclose rule. This approach would be particularly helpful in determining how to apply ex parte rules to a specific proceeding.

In order to provide further clarification and to avoid a chilling effect on necessary and routine informal contacts between members of the public and the Commission, the Commission should provide further definition of contacts that actually constitute ex parte presentations for purposes of these rules. Examples of contacts that should not be considered ex parte presentations for purposes of these rules include the following: (1) status inquiries to the Commission that do not involve the merits of a particular matter submitted for a determination by the Commission; (2) requests for interpretation of existing rules or procedures; (3) inquiries regarding administrative procedures; and (4) inquiries from the Commission to a person or entity that involve information available to the general public or necessary for the Commission to evaluate an uncontested application or issue.

As the Commission suggested, informal complaints and tariff proceedings (prior to investigation) should continue to be treated as exempt from ex parte rules. Generally, contacts between carriers and the Commission regarding tariff matters (prior to investigation) are for the purpose of obtaining clarifications and handling other non-controversial issues. Treatment of these proceedings as permit-but-disclose would have a severe chilling effect on the parties' ability to engage in constructive dialogue with the Commission. The settlement of informal complaints and tariff proceedings is significantly streamlined by the ability of the parties to discuss all relevant issues freely with the Commission and its staff. Requiring disclosure of each of these contacts would be excessively burdensome, and such burden would far outweigh any benefit of disclosure

of those conversations. Further, exemption of such contacts from ex parte disclosure requirements will not harm other parties. Such exemption has worked well in the past and should not be altered.

II. SBC supports certain modifications of the sunshine period prohibition.

The Commission sought comments on whether a limited "sunshine period" should be made applicable to circulation items. To the extent practicable, circulation items should be treated no differently from items placed on an open meeting agenda. The Commission's rules should thus provide for a "sunshine period" for circulation items commencing with the issuance of a news release announcing Commission action on a circulation item. Since the Commission has undertaken to improve its time intervals for completing action on circulation items, SBC believes that a "limited" sunshine period would be appropriate.

SBC also supports the Commission's proposal to issue a "blanket" exemption for industry meetings or conferences attended by Commissioners and Commission staff during the period between notification of the item on the open meeting agenda and the release of the text of the item. These meetings are typically attended by representatives from various segments of the telecommunications industry, including local exchange carriers, wireless carriers, interexchange carriers, competitive access providers, and cable television providers. Any presentation is thus likely to include divergent viewpoints. As the Commission recognized in its Notice, inclusion of presentations at these types of meetings in the definition of ex parte communications prohibited during the "sunshine period" could either require Commissioners and Commission staff to avoid these industry meetings or severely limit the permissible content of presentations made by industry

representatives at these meetings. All segments of the telecommunications industry, as well as the public at large, would be harmed by restricting industry communication in such a way.

III. SBC supports a balanced approach to requirements for notices in permit-but-disclose proceedings.

The Commission sought comment on whether a detailed written summary of the entire subject matter of an oral ex parte presentation should be required, even if the material presented and the party's position on the issues are already contained in the record. SBC recommends that the Commission adopt a balanced approach. A party's written notice or summary should contain sufficient detail so that other parties will have actual notice of the content of the ex parte presentation, including the points made in the meeting, the positions taken by the party, and the individuals participating in the contact. The Commission should not, however, require a "summary" that is so detailed that it results in the filing of additional and redundant pleadings.

The Commission also requested comment concerning the handling of an ex parte notice that Commission employees involved in the presentation believe is deficient. In such a case, the Commission employees should notify the party of the perceived deficiency and request that a supplemental summary be filed with the Commission within one day of the notification. The Commission staff should not assume the inappropriate burden of preparing a memorandum summarizing a party's presentation.

The Commission also proposed to lengthen the time period for filing ex parte notices to three days. SBC disagrees with that proposal and submits that the written notices should continue to be filed within one day of the presentation. Generally, a party making a presentation prepares a summary in advance, summarizing the points that it intends to raise in the presentation. One

day should be sufficient time for a party to summarize unanticipated points or topics. A delay of three days in the filing of ex parte summaries will harm other interested parties in a proceeding, particularly when ex parte contacts are made shortly before the commencement of a "sunshine period."

SBC would point out that its concern with timeliness in the filing of ex parte summaries is particularly relevant in light of the backlog and delay that is presently occurring in the release of ex parte summaries by the Commission. The Commission's existing rules¹ require that "the Secretary shall issue a Public Notice listing any written ex parte presentation or written summaries of oral ex parte presentations received by his office during the preceding week relating to any non-restricted proceeding." However, for example, a Public Notice released by the Commission on February 13, 1995, lists ex parte filings received on or before January 27, 1995. The Public Notice of February 13 should have listed ex parte presentations received on or before February 10, 1995, which was the preceding week, but in this case there was a two-week delay. Allowing three additional days for filing ex parte summaries could only exacerbate the existing problem with delays. The Commission should focus on its backlog problem so that parties to proceedings are receiving ex parte information on a timely basis.

The Commission mentioned in the Notice that it will consider ex parte summaries filed through Internet E-mail to be written ex parte notices in compliance with the Commission rules. Since not all parties have Internet access, the Commission should print any ex parte summary

¹47 C.F.R. § 1.1206(a)(4) -- *Notice of Ex Parte Presentations*.

received through the Internet and make it available through the regular Public Notice process so that all interested parties will have access to the information.

IV. SBC does not oppose the Commission's proposals with respect to imposing a duty to bring ex parte questions to the Commission's attention.

SBC does not oppose the Commission's proposal to impose a duty on parties that have reason to believe that a particular situation raises a significant ex parte question to notify the Office of General Counsel before engaging in such ex parte contact. In taking this position, SBC assumes that the Office of General Counsel will resolve any doubts in a timely manner, thus allowing the ex parte meeting to take place if permissible. The Commission should, however, provide further guidance concerning what constitutes reasonable belief that a situation raises an ex parte question.

V. SBC supports the Commission's proposal to delegate to the Office of General Counsel additional authority with respect to ex parte matters.

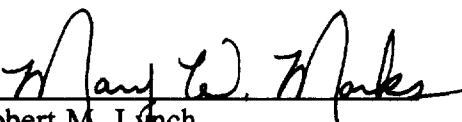
SBC supports the Commission's proposal to transfer responsibility for handling matters involving alleged ex parte violations from the Managing Director to the Office of General Counsel. The Office of General Counsel has the expertise to handle these issues in an appropriate manner.

VI. Conclusion.

As stated in detail above, SBC generally supports the Commission's proposals, which have been issued in an attempt to clarify and streamline the ex parte presentation. While SBC has noted some areas of disagreement, SBC does endorse the Commission's intention of providing clarification and simplification in this significant area.

Respectfully submitted,

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